

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8130 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
Nos. 1 to 5 No

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MUKESH @ BODIYA BATUKBHAI VAGRI

Versus

STATE OF GUJARAT

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Appearance:

MS SUBHADRA G PATEL for Petitioner  
MR ND GOHIL, ASSISTANT GOVERNMENT PLEADER  
for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 17/02/99

ORAL JUDGEMENT

The petitioner in this writ petition under Article 226 of the Constitution of India has challenged the detention order dated 4.7.1998 contained in Annexure "A" passed by the Police Commissioner, Rajkot City under section 3(2) of the Prevention of Antisocial Activities Act (for short "PASA") and has prayed for his immediate

release from illegal detention.

The grounds of detention are contained in Annexure "B" in detail. In the first instance general activities of the petitioner which were considered to be prejudicial for maintenance of public order are disclosed. The second material disclosed is registration of five cases under chapter XVII of IPC and the third material is statements of two confidential witnesses. On the aforesaid material the subjective satisfaction of the Detaining Authority was that the petitioner is dangerous person and his activities were prejudicial for maintenance of public order. Accordingly, the impugned order of detention was passed which is under challenge in this writ petition on the sole ground that the activities of the petitioner were not prejudicial for maintenance of public order.

The Detaining Authority was justified in entertaining subjective satisfaction from the material on record viz. registration of five cases punishable under Chapter XVII of the IPC as well as from the statements of two confidential witnesses that the petitioner was repeatedly committing aforesaid offences and was thus habitual in committing those offences. He was therefore rightly adjudged to be dangerous person.

For detaining him as dangerous person further requirement as contained under section 3(4) and explanation appended thereto is that the activities of such person must be prejudicial for maintenance of public order. The grounds of detention have been examined. Para 2 contains general allegations without disclosing the material on which such subjective satisfaction was formed nor the petitioner was informed about the details of his activities. Thus, on such vague allegation the petitioner could not submit effective reply in defence. Unless specific instances were given, on general allegations it cannot be said that the activities of the petitioner were prejudicial for maintenance of public order.

The second material is registration of five offences under sections 379, 380, 459 and 457 IPC. From the grounds of detention it cannot be said that while committing theft, robbery etc., on these occasions the petitioner created situation prejudicial for maintenance of public order. There can be no implied inference or presumption that the activities of thief or robber are always prejudicial for maintenance of public order. Consequently these registered offences could not be

pressed in service for coming to subjective satisfaction that the activities of the petitioner were prejudicial for maintenance of public order.

Then comes the statements of two confidential witnesses. The Detaining Authority asserts that he has applied his mind to the entire statement of confidential witness no.1, but he forgot that he did not mention time of occurrence of the incident narrated by first witness in the grounds of detention. The learned Assistant Government Pleader from the record pointed out that in the original statement of witness no.1, time of incident is written as 4.00 p.m., as such, it cannot be said that the statement of the witness is vague. Ofcourse there is some force in this contention but the question is whether the Detaining Authority has applied his mind to the statement of witness no.1 while formulating the grounds of detention or that the grounds of detention were formulated by someone else and the Detaining Authority has simply signed the same. If he would have examined the statement of witness no.1 he should not have committed mistake of not mentioning time of incident in the grounds of detention. This, therefore, reflects non application of mind to the entire material on record by the Detaining Authority and this renders the detention order bad in law.

Further, after examining the statements of two confidential witnesses even remotely no satisfaction much less subjective satisfaction could be arrived at by the Detaining Authority that the activities on those two occasions were prejudicial for maintenance of public order.

The learned Assistant Government Pleader has relied upon two Division Bench pronouncements of this Court reported in 1989(2) GLR Pg.1005 [Iqbal Husain Ahmedmiya Shaikh Vs. Commissioner of Police] and 1993(1) GLH Pg.477 [Vijay Rambrij Yadav Vs. Commissioner of Police]. But both these cases are distinguishable on facts in as much as in these cases injuries were caused to the witnesses and also to the members of the public who gathered at the spot.

Thus, from the material on record, the subjective satisfaction of the Detaining Authority that the activities of the petitioner were prejudicial for maintenance of public order cannot be sustained. If this is so, then the detention order is rendered bad in law. The writ petition, therefore, succeeds and is hereby allowed. The impugned order of detention dated 4.7.1998

contained in Annexure "A" is hereby quashed. The petitioner shall be released forthwith unless wanted in some other case.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt